

## Problems with the Articles of Confederation

1. 9 of 13 states necessary to get anything done- no means of demanding conformance with treaties etc..

All States treated the same- big or small

Resolved-

- a. Great Compromise (Bicameral)- House (Proportional) (Va. Plan) and Senate (equal representation NJ plan), Electoral College to choose President, primarily proportional, Art. 1 S1
- b. Majority Rule- Both bodies largely work off the premise of majority rule, though they each can set their own rules and in the Senate in some cases it can effectively require a 60% vote Art. 1, S5

2. Treaties, how to get States to abide. Va. And other States were failing to protect Loyalist property

Resolved-

- a. Central Government exclusive power to make treaties (Senate and Pres) Art. 5 and Art II S2
- b. Treaties are law of the Land- Supreme Law- EG WTO rules are national obligations Art. 5
- c. States can only enter into Treaties w/For. Countries or other States (compacts) only w/permission of Central Govt. Art 1 S10
- d. Only the Central Govt. could lay tariffs Art 1 S8

3. States discriminating against other State citizens

Resolved-

- a. **COMMERCE CLAUSE\*!!!**-Congress has the power to regulate trade (will morph into some quite different) Art. 1 S 8
- b. States can not place import or export tariff on goods Art 1 S9
- c. Extradition, States required to Extradite citizens to other States Art. 1 S2
- d. Full faith and Credit Clause- States must honor the public acts of other States (ie. Divorces, marriages, lawsuit findings) Art. IV S1

e. No preferential treatment by Congress to any State      Art I  
S9

#### 4. Central Govt. had no means to ensure the collection of money

Resolved-

- a. Central Govt. had the power to lay and collect taxes  
Art. 1 S. 8
- b. Central Govt. can create an army/navy and call militia  
Art. 1 S 8

#### 5. Money

Resolved-

- a. Central Govt. had power (concurrent w/ State banks for several years) to Coin money. Art 1 S8
- b. Central Govt also power to borrow. Art. 1 S8
- c. Central Govt. assumed prior debts Art VI

#### 6. No Standing Army

Resolved-

- a. Executive is Commander and Chief. Art II, S2
- b. Congress- maintain an Army and Navy. Art 1, S8
- c. Congress Declares WAR (NOTE not the PRESIDENT- Last declared War 12/7/1941). Art 1 S8
- d. Central Govt has obligation to quell State insurrections (primarily a fear of slave holders) Art IV S4

#### 7. No Judiciary - No formal means for adjudicating disputes

**Resolved-**

- a. Article 3 of Constitution- Establishment of the US Supreme Court Art. III
- b. lower courts to be determined by Congress Art. 3 S 1

#### 8. Conflict between State and Central Govt. Issues

Resolved-

- a. Constitution as Supreme Law of the Land. Art. VI
- b. Constitution Limited Document- all other powers reserved for State 10th Amendment

Specific Liberties already contained in Constitution so not necessary for the Bill of Rights

- a. **Writ of Habeas Corpus**- (except during invasion/rebellion)- Can't be thrown in Jail w/out a chance to go before a judge/magistrate  
Art 1 S9
- b. No Bill of Attainder- Can't be punished w/out a trial     Art 1 S9
- c. **No Ex Post Facto Laws**- Can't make a law and then apply it to past behaviour     Art 1 S9
- d. No Religious Tests for Office     Art VI

Bill of Rights (See first 10 Amendments to Constitution)- pushed by Anti-Federalists

Constitutional Fight- Getting Ratified

Federalist Papers- Argued and helped to explain Constitution

Alexander Hamilton

John Jay

James Madison (wrote 10 and 51)

Provides an unofficial Legislative Record for the Constitution

Important Federalist Papers -- Big is Better--- Size does Matter

10 (Factions- Man has certain tendencies, not all good, money is one of the major issues that leads to factions. With Bigger Groupings, things work Better. People aren't giving, one can not control the effects of factions.. Republic helps, majority rule in democracy is not the answer. Representatives have wisdom and the concern of the "public weal", representative Govt. must be big enough that a few can not run roughshod , by having a larger group elect the rep..more likely to have a "good rep" ...greater size has greater number of factions less likely that there will be a tyranny by few or a tyranny by the majority) and 51 (coalitions)

Interior structure of Govt. , separation of offices, (Congress can't be part of the Executive), checks and balances between branches,

w/in Govt. many interests that are constantly shifting means that coalitions will naturally form, but only for the moment.

## **Checks and Balances**

Example

Legislation

Congress votes, both branches, must come out with the same legislation, goes to the President, President 10 days to sign, if Vetoes returns to Congress, Congress 2/3rds Vote to override

Courts review legislation when a case is ripe—no earlier

Appointees

Executive- Appoints, Senate Confirms

Military

Executive Commander in Chief

Congress Budget Strings and Declares War

Amendment Process

1. **2/3<sup>rd</sup> of each branch of Congress or 2/3<sup>rd</sup> of State Legislatures**
2. **3/4<sup>th</sup> of the States by State legislature or by State Convention**

**Time Limit- Unclear- Congress can probably set it**

**Many Amendments are procedural (housekeeping, no major effect on people's lives)**

**1<sup>st</sup> 8 Bill of Rights, individuals are effected**

**9 ,10 and 11 largely refer to the Power of the Central Govt versus the States**

**12 procedural (resolve Adams-Jefferson situation)**

**13-15 Civil War                      14<sup>th</sup> Amendment (Due Process Clause and Equal Protection Clause)**

**16-19 (note 21 repealed 18)              Progressive and Populist amendment (Income Tax, Pop Election Senators, Prohibition, Women Vote)**

**20-25 and 27      Procedural**

**26      Right for 18 yr olds to Vote**

